Supreme Court, U.S.
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No. 09-731

In The

Supreme Court of the United States

JEANNE MOUNT,

Petitioner,

V.

UNITED STATES OF AMERICA, et al.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Jeanne Mount
9846 Portola Drive
Beverly Hills, California 90210
(310) 860-0906

In Pro Se

QUESTIONS PRESENTED

1. May citizens rely on published Congressional and Agency guidance, as well as the decisions of this Court, as to the requirements of the law?

2. Is Title 2, Section 285b of the United States Code binding on Congress and the courts as to restatements of the law?

LIST OF PARTIES

Petitioner:

Jeanne Mount, a private citizen.

Respondents:

1. The United States of America;

2. R.O. Mitchell, an individual, United States employee.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jeanne Mount respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the district court dismissing Petitioner's Complaint was not reported and is reproduced in the appendix (Pet. App.) at page 5a. The opinion of the Ninth Circuit affirming the dismissal of the district court was not published and is reproduced at Pet. App. page 2a. The Ninth Circuit's order denying Petitioner's petition for rehearing was not reported and is reproduced at Pet. App. page 1a.

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit was entered on July 8, 2009. An order denying Petitioner's petition for rehearing was entered on September 28, 2009. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2410(a)(1) of Title 28 of the United States Code provides, in pertinent part:

> Actions affecting property on which the United States has a lien. [T]he United States may be named a party in any district court...(1) to quiet title to...real or personal property on which the United States has or claims a mortgage or lien.

Sections 3707(a) and (b) of Title 26 of the United States Code (appended to Section 6651 of the Internal Revenue Code in July 1998) provide that: (1) the Internal Revenue Service may not label persons tax protesters, and (2) the Internal Revenue Service may label persons as non-filers unless and until such persons begin filing tax returns again.

STATEMENT OF THE CASE

In 1998, Congress held hearings into the growing abusiveness and lawlessness of the Internal Revenue Service, and as a consequence of such hearings, restructured the Internal Revenue Service and added several new remedial statutes to Title 26 of the United States Code. Among those new statutes were

Sections 3707(a) and (b) (appended to Title 26, Section 6651 of the United States Code) and Title 26, Section 7701(31)(A), which defines foreign income which is not includible as gross income under Subtitle A of Title 26 of the United States Code.

Relying on these new statutes, Petitioner stopped filing tax returns. Respondents subsequently filed a tax lien in the Los Angeles County Recorder's Office alleging that Petitioner had been assessed taxes for the years 2000 and 2003.

Petitioner filed a complaint under 28 U.S.C. Section 2410 in the district court to remove the lien as a cloud on Petitioner's title as to both real estate and Social Security payments. Respondents filed an answer, without asserting any cross-claims, and the district court, without interpreting the new statutes, dismissed Petitioner's complaint. Petitioner appealed to the Ninth Circuit Court of Appeals, which affirmed the district court, and also refused to interpret the new statutes. The Ninth Circuit's ruling did not address the lien as to the real estate, and also refused to interpret the new statutes. The new statutes have now been before five federal judges, and one state court judge, and all have refused to interpret them.

Petitioner also filed Revenue Ruling 2005-59 in the Ninth Circuit, which revenue ruling states that In order for a tax return to be valid for assessment purposes, such return must have the signature of the taxpayer (citing to three decisions of this Court). Revenue Ruling 2005-59 cites and acquiesces in Millsap v. Commissioner, 91 T.C. 926 (1988), which states that filing a tax return is a consent to an assessment of tax in our tax system, citing to 26 U.S.C. Section 6201 as authority for its ruling. Section 6020 of Title 26 of the United States Code also states that disclosing financial information must be by consent.

Title 26, Code of Federal Regulations 601.601 states:

"Revenue Rulings apply retroactively unless the Revenue Ruling makes a specific statement indicating that under the authority of IRC 7805(b) of the Internal Revenue Code of 1954, the extent to which it is to be applied without retroactive effect." (Emphasis added). Revenue Ruling 2005-59 makes no specific statements that it is to be applied without retroactive effect.

Title 26, Code of Federal Regulations Section 601.201(a)(6) states:

A Revenue Ruling is an official interpretation by the Service...Revenue Rulings are published for the information and guidance of taxpayers, IRS officials, and others concerned. (Emphasis added.)

Under its own published guidance, and under the authority of the Internal Revenue Code and the decisions of this Court, the Internal Revenue Service lacked authority to assess a tax to Petitioner. "Revenue Rulings are concessions by the Commissioner where such rulings are relevant to the disposition of a case. The government's arguments against its own officially-stated positions are capricious application of the law." Rauenhorst et ux v. Comm., 119 T.C. No. 9 (October 7, 2002).

REASONS FOR GRANTING THE PETITION

1. The issues are of overriding importance to preserve the Congressional right to conform the law to the standards of Title 2, Section 285b of the United States Code, and to have such restatements implemented by the courts.

This Court, in Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984), set forth the standards by which the lower federal courts must determine what a statute means. First and foremost, the Court said, is the intent of Congress. "Clear evidence of legislative intent prevails over other principles of statutory construction." Passenger Corp. v. Pass. Assn., 414 U.S. 453 (1974). And in Chevron, supra, "If Congress has spoken to the precise question at issue, that is the law and must be given effect." If the intent of Congress is not clear, the lower courts must then determine if the agency interpretation is reasonable.

In 1954, Congress restated the 1939 Internal Revenue Code, and in Volume 3 of the United States Code Congressional and Administrative News, 83rd Congress, 2nd Session, Congress went through all the tax statutes of the 1954 Code one by one, explaining in detail, for the benefit of the public, how or if such statutes differed from their predecessors in the 1939 Internal Revenue Code.

The regulation at 26 CFR 301.6201-1 (the assessment statute regulation) states that the Internal Revenue Service is authorized to make all inquiries necessary to the determination and assessment of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. (Emphasis added.)

Part 601 of the Code of Federal Regulations is the Internal Revenue Service's Statement of Procedural Rules. It is derived in part from Title 26, Section 7851—Applicability of the Internal Revenue Laws. "The IRS has no power other than that given to it by Congress." U.S. v. LaSalle Bank, 437 U.S. 298 (1978).

At 26 CFR 601.101(a), the Internal Revenue Service states that it uses the procedural statutes from the 1939 and the 1954 Internal Revenue Codes. At 26 CFR 601.102(b)(1)(i), the Internal Revenue Service states that it collects taxes based on Chapters 1 and 2 of the 1939 Internal Revenue Code and on the 1954 Internal Revenue Code. This Court stated, in U.S. v. Nixon 418 U.S. 683 (1974), that an agency is restricted and bound by the rules it passes for its own use.

2. The Ninth Circuit's judgment directly conflicts with the intent of Congress as to the relevant procedural statutes, as well as this Court's decisions in U.S. v. LaSalle Bank, supra, and U.S. v. Nixon, supra.

As this Court explained in U.S. v. LaSalle Bank, the statutes of the 1939 Internal Revenue Code were carried forward, without change in meaning or substance, into the Internal Revenue Code of 1954:

> Section 7602 derives, without change in meaning, from corresponding and similar provisions in 1939. Sections 3614, 3615, and 3654 of the 1939 Code. By 3614(a) the Commissioner received the summons authority "for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made." Section 3615(b)(3) authorized the issuance of a summons "whenever any person who is required to deliver a monthly return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent or contains any undervaluation or understatement." (Emphasis added.)

The public can rely on the opinions of the Supreme Court as being the law. U.S. v. Mason, 412 U.S. 391 (1973).

CONCLUSION

In Cass v. U.S., 417 U.S. 72 (1974), this Court said: "The intent of Congress is the controlling consideration...Here the meaning of the predecessor statute is clear and quite different from the meaning petitioners would ascribe to the codified law....."

Sections 3611 and 3612 of the 1939 Internal Revenue Code (the predecessor statutes of Internal Revenue Code Section 6020) are quite clear in limiting the filing of required tax returns to "articles and objects, made or sold and charged with a tax," as this Court pointed out in U.S. v. LaSalle Bank, supra. Congress has specified that there is no difference in substance as to 26 U.S.C. Section 6020, and 26 U.S.C. Sections 3611 and 3612 of the 1939 Code. [1]

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[1] Congress also specified that there is no difference in substance between 26 U.S.C. Section 6211 and its predecessor in the 1939 Code: both require a legitimate "return" prepared by a taxpayer. 26 U.S.C. Section 6201 (the assessment statute) has two small differences in substance from the 1939 equivalent statute, and there is no difference between 26 U.S.C. 931, and 26 U.S.C. 251 (1939) (specifying what the United States is for tax purposes).

For all the foregoing reasons, this Court should accept this Petition for a Writ of Certiorari in order to give the public and the lower courts a uniform standard under the procedural statutes of Title 26 of the United States Code for what constitutes procedural error under 28 U.S.C. Section 2410.

Also, the Internal Revenue Service has asserted to the public that its assessments are under Title 26 of the Internal Revenue Codes of 1939 and 1954. It should not be permitted to abrogate its own rules.

Respectfully submitted,

December 4, 2009

Jeanne Mount
9846 Portola Drive
Beverly Hills, CA 90210
(310) 860 0906
In Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 07-56641

JEANNE MOUNT,

Plaintiff-Appellant,

V.

UNITED STATES OF AMERICA;
C.R. MITCHELL, Internal Revenue Service Employee,

Defendants-Appellees.

[September 28, 2009]

ORDER.

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

The petition for panel rehearing is denied.

No further filings will be accepted in this closed case.

APPENDIX B

NOT FOR PUBLICATION

UNITED COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 07-56641

JEANNE MOUNT
Plaintiff-Appellant,

V

UNITED STATES OF AMERICA; C.R. MITCHELL, Internal Revenue Service Employee,

Defendants-Appellees.

Memorandum*

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Jeanne Mount appeals pro se from the district court's order dismissing her action alleging procedural and substantive violations of the tax code by the Internal Revenue Service ("IRS") in levying her Social Security benefits. We have jurisdiction pursuant to 28 U.S.C. Section 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b), *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006), and we affirm.

The district court properly rejected Mount's argument that the IRS was required to send a notice of seizure in addition to the notice of levy, because only a notice of levy is required to levy on intangible property. *See United States v. Donahue Indus., Inc.*, 905 F.2d 1325, 1330 (9th Cir. 1990); *see also* 26 U.S.C. Section 6322 (providing that tax liens arise at the time of assessment and continue until the liability is satisfied); *Sego v. Comm'r*, 114 T.C. 604, 611 (2000) ("[T]axpayers cannot defeat actual notice by deliberately refusing statutory notices of deficiency.").

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App P. 34(a)(2).

Contrary to Mount's contentions, the United States has not waived review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b), *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006), and we affirm.

The district court properly rejected Mount's argument that the IRS was required to send a notice of seizure in addition to the notice of levy, because only a notice of levy is required to levy on intangible property. *See United States v. Donahue Indus., Inc.*, 905 F.2d 1325, 1330 (9th Cir. 1990); *see also* 26 U.S.C. Section 6322 (providing that tax liens arise at the time of assessment and continue until the liability is satisfied); *Sego v. Comm'r*, 114 T.C. 604, 611 (2000) ("[T]axpayers cannot defeat actual notice by deliberately refusing statutory notices of deficiency.").

---

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App P. 34(a)(2).

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES GENERAL

No. CV07-1991SJO (VBKx)

JEANNE MOUNT
Plaintiff,

V.

UNITED STATES OF AMERICA;
C.R. MITCHELL, Internal Revenue Service Employee,

Defendants.

August 31, 2007

PRESENT: THE HONORABLE S. JAMES OTERO,
UNITED STATES DISTRICT JUDGE

PROCEEDINGS (In chambers): Order denying Plaintiff's Motion to Strike, Denying Plaintiff's Motion for Judgment on the Pleadings, Dismissing Case.

Plaintiff Jeanne Mount ("Mount") has appeared pro se in her efforts to oppose the tax collection efforts of the Internal Revenue Service (IRS). It appears that Mount believes that she is not required to file a federal tax return and/or that she believes that she is not required to pay taxes.

Mount has moved to strike portions of the Answer of Defendants United States of America et al. ("Defendants") and moved for judgment on the pleadings, making a dozen or so arguments with regard to the Motion to Strike and a few more arguments with respect to the Motion for Judgment on the Pleadings. These arguments are thoroughly and correctly addressed by the Opposition filed by Defendants. To briefly respond to Mount's arguments in the Motion to Strike:

Mount argues that exhibits 1-2 of Defendants' Answer are hearsay. (Mot. At 2). The exhibits are computer printouts showing tax assessments and payments for Mount, a so-called Form 4340, printed on April 26, 2007. (Ans. Paragraph 3). Mount has not presented any evidence undermining the accuracy of a Form 4340, the Form 4340 is admissible even if the Form 4340 lacks a formal certification ("Form 2866") from the IRS. *United States v. Boyce*, 148 F.Supp.2d 1069, 1082 (C.D. Cal.2001). These Forms 4340 have been signed as correct by David R. Martin, Chief of Accounting Operations. (Ans. At 11, 15.)

Mount argues that the lines of exhibits 1-2 showing "Substitute for Return" with an assessment of $0.00 exceed the authority of the IRS to prepare substitute returns. (Mot. At 2.) These lines appear to be empty "dummy" returns prepared for the operation of the IRS accounting system to allow an audit to be conducted. (Opp'n at 3.) The Ninth Circuit has blessed this practice, holding that IRS regulations "clearly provide" that where a taxpayer files no return, the deficiency can be determined as if a return was made showing the amount of tax to be zero." *Roat v. Commissioner,* 847 F.2d 1379, 1381 (9th Cir. 1988).

Mount has attached excerpts from a report by what was then called the General Accounting Office regarding the operations of the IRS in fiscal year 1994. Mount argues that the excerpts demonstrate the untrustworthiness of IRS computer reports. (Mot. At 2.) Mount's speculative argument was rejected by other courts long ago. *IBEW Local Union No. 640 v. Forman,* 1995 WL 735743, *2 (D. Ariz. 1995). The relevance of the GAO report has not increased with age.

Mount argues "that there were no valid regulations for IRC Section 6020(b) in existence prior to July 18, 2005." (Mot. At 2.) Apparently, Mount believes that tax laws are invalid if they are not supported by statutes and implementing

Regulations. (Opp'n at 7.) This argument "has been repeatedly rejected as lacking merit." *Abell v. Sothen,* 214 Fed. Appx. (sic) 743, 757 (10th Cir. 2007).

Mount argues that the Internal Revenue Code is not positive law and therefore does not apply to her. (Mot. At 3.) However, Congress's failure to enact provisions of the Internal Revenue Code into positive law has only "evidentiary significance" and "does not render the underlying enactment invalid or unenforceable." *Ryan v. Bilby,* 764 F.2d 1325, 1328 (9th Cir. 1985). Unless Mount can show a discrepancy between the Statutes at Large and the Internal Revenue Code, it is irrelevant whether the latter is positive law. *United States v. Wodtke,* 627 F. Supp. 1034, 1040-41 (N.D. Iowa 1985).

Mount's argument in paragraph eleven of her Motion to Strike is terse and unclear.

Mount argues that any seizure of her assets requires a Section 6335 Notice of Seizure. (Mot. At 4.) This is not correct. "A levy with respect to intangible property is made by service of a notice of levy. Service of a notice of levy confers on the United States the right to all property levied upon and creates a custodial relationship so that the property comes into the constructive possession of the government." *United States v. Hemmen,* 51 F.3d 883, 887 (9th Cir. 1995).

Mount argues that because she is not a corporate officer or federal employee, but rather is a "private citizen," a Notice of Seizure is required. (Mot. At 4.) This is not correct. *Hemmen* was brought against a "private citizen" (to use Mount's word), a trustee in a bankruptcy case.

Mount argues that property must be subject to forfeiture to be subject to levy. (Mot. At 4.) This is not correct. The Ninth Circuit has explained what property is "levied" to pay taxes owed and property is "forfeited" when the property is used to defraud the government. *Maisano v. Welcher*, 940 F.2d 499, 502 (9th Cir. 1991).

Mount argues that Social Security benefits are not subject to seizure. (Mot. At 4.) However, Social Security benefits are not listed in 26 U.S.C. Section 6334(a). Subsection (c) provides that only property listed in subsection (a) is exempt from levy.

Mount argues that 28 U.S.C. Section 2410(b) "requires that [the IRS] set forth with particularity claims going to the amount and accuracy of the alleged tax liability." (Mot. At 4.) This is not correct. It is true that 28 U.S.C. Section 2410(b) requires that a plaintiff (I.e., Mount) to "set forth with particularity the nature of the interest or lien of the United States." However, the statute immediately explains, "In actions or suits involving

Liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identify of the internal revenue office which filed notice, and the date and place such notice of lien was filed." 28 U.S.C. Section 2410(b). Because Mount brought this lawsuit, the requirements of 28 U.S.C. Section 2410(b) are immaterial to the IRS. In any event, courts have held that taxpayers cannot use actions filed pursuant to 28 U.S.C. Section 2410 to challenge the existence, validity, or extent of a tax liability. Taxpayers may only use the section to contest the procedural validity of a tax lien. *Elias v. Connett,* 908 F.2d 521, 527 (9th Cir. 1990). The Motion to Strike is DENIED.

As for the Motion for Judgment on the Pleadings, Mount's argument that she is exempt from paying taxes simply because she chose not to file tax returns is frivolous. Section 6012(a)(1)(A) requires that a tax return be filed by every individual who earns a household level of income. 26 U.S.C. Section 6012((a)(1)(A). Mount has met this threshold. (Opp'n at 19-20.) The Motion for Judgment on the Pleadings is DENIED.

As can be seen by the old dates on the court cases cited above, Mount's arguments have been made by tax protestors (sic) for decades. Mount has made no serious arguments regarding the procedural validity of her tax lien. Her lawsuit is frivolous. The action is DISMISSED.